



ECONOMIC
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INDIRECT TAX NEWSLETTER



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NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
1	GST Circular No 181/13/2022 - dated 10.11.2022	<p>Circular clarifies on the following aspects related inverted duty ('ID') refund:</p> <ul style="list-style-type: none"> ▪ Applicability of new refund formula <p>The amendment in formula prescribed under Rule 89(5) vide Notification No. 14/2022-CT dated 05.07.2022 would be applicable prospectively i.e. on applications filed on or after 05.07.2022</p> <ul style="list-style-type: none"> ▪ Restriction on refund of unutilised ITC of certain goods <p>Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, the refund of unutilised ITC of certain goods falling under chapter 15 and 27 was restricted. The circular has clarified that the said restriction would be applicable prospectively i.e., on refund applications filed on or after 18.07.2022.</p>
2	GST Circular No. 182/14/2022 dated 10.11.2022	<p>Detailed guidelines have been issued for jurisdictional tax officers to verify the veracity of the transitional credit claims filed by the applicant pursuant to ruling passed by the Hon'ble Supreme Court in case of <i>Union of India v. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709- 32710/2018</i>. The concerned officers are required to verify the claim and pass an appropriate order within a period of 90 days.</p>
3	Notification No 22/2022 - Central Tax dated 15.11.2022	<p>The Notification amends the CGST Rules, 2017 and specifically amends instructions to Part V of Form GSTR – 09 to align time limit to avail ITC or issue Credit Note or rectify returns.</p> <p>Part V deals with furnishing details of transactions for the financial year declared in returns of the next financial year till the specified period. The Notification has extended the specified period for FY 2021-22 till 30.11.2022. Thus, transactions pertaining to FY 2021-22, for which GST has been paid in FORM GSTR-3B of April 2022 to October 2022, filed up to 30.11.2022 can be declared in Part V.</p>
4	Notification No 23/2022 - Central Tax dated 23.11.2022	<p>W.e.f. 01.12.2022, the Competition Commission of India ('CCI') would subsume the functions of National Anti-Profiteering Authority pertaining to examination of reduction in rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices or not.</p>
5	Notification No 24/2022 - Central Tax dated 23.11.2022	<p>W.e.f. 01.12.2022, the following provisions of the CGST Rules have been omitted:</p> <ul style="list-style-type: none"> ▪ Rule 122 pertaining to Constitution of Anti Profiteering Authority ('APA'), ▪ Rule 124 pertaining to appointment, remuneration and terms & conditions of service of the Chairman and Members of APA, ▪ Rule 125 pertaining to Secretary to APA, ▪ Rule 134 pertaining to Decision to be taken by the majority members of APA, ▪ Rule 137 pertaining to tenure of APA. <p>Further, minor changes have been brought in Rule 127 such as replacement of term 'duties' with functions and in Explanation after Rule 137 APA has been replaced with CCI.</p>
6	Instruction No. 04/2022 - GST dated 28.11.2022	<p>Detailed instructions have been issued on the way of processing and sanctioning of IGST refunds, upheld for verification of credentials of the exporter under Rule 96(4)(c), transmitted to the jurisdictional GST authorities under Rule 96(5A).</p>

RECENT CASE LAWS

Who qualifies as an Intermediary

Genpact India Private Limited v. Union of India & Others
[CWP-6048-2021 (O&M)]

FACTS OF THE CASE

- Genpact International ('GI'), located outside India, contracted with the Petitioner for providing BPO services to its customers, on non-exclusive basis via a Master Services Sub-Contracting Agreement ('MSA').
- Services rendered by Petitioner are primarily in the nature of back-end services which illustratively include scanning & processing vendor invoices, book-keeping, ledger reconciliations, technical IT support, data analysis, supporting business functions like sourcing & supply chain management etc.
- GI issued an invoice on its customers and the Petitioner raised an invoice on GI. The Petitioner treated the said services rendered to GI as export and claimed benefit of refund.
- The Appellate Authority concluded that the Petitioner provides intermediary services and thus, the place of supply is in India. Therefore, services do not qualify as 'export' and accordingly, not eligible for refund.

JUDGMENT

- As per the Hon'ble High Court ('HC'), three conditions must be fulfilled to qualify as 'intermediary' i.e. (a) principal agency relationship, (b) facilitation of provision of services and (c) service must not be provided on own account.
- MSA sets out that the Petitioner undertakes to serve the overseas clients of the group company on its own i.e. on Principal to Principal rather than the Petitioner acting as an agent of GI.
- The Hon'ble P&H HC decided that the services supplied by the Petitioner qualify as export of services and are not in the nature of intermediary services as per the provisions of the GST law.

Whether a lessee can transfer to right to use in goods

Nayana Premji Savala vs Union of India & Ors [2022-VIL-707-BOM-ST]

FACTS OF THE CASE

- The Petitioner is the Liquidator of Swire Oilfield Services India Private Limited ('Company'), which is in liquidation. The company was inter alia engaged in providing containers on a rental basis to its customers. The company took such containers on lease vide a Lease Agreement which permitted sub-leasing of such containers to third party.
- The company discharged VAT on the lease rental. However, the service tax authorities demanded service tax on same as the company was not the owner of containers and therefore, it cannot transfer right to use in such goods.

JUDGMENT

- It was observed that as per Article 366(29A)(d) of the Constitution of India, transfer of right to use the goods is a deemed sale. Further, definition of 'sale' under Maharashtra Value Added Tax Act, 2002 includes the 'transfer of the right to use' any goods for any purpose within its ambit.
- The Hon'ble HC noted that the Company had transferred possession and the effective control to the lessee i.e. transfer of right to use. Service tax would apply only when possession and effective control is not transferred. Thus, it is not a taxable service u/s. 65 (105)(zzzzj) of the Finance Act, 1994 ('Finance Act'). It was also held that the sale of goods and services is mutually exclusive and both taxes cannot be levied on the same transaction.

Whether Integrated Goods & Service Tax ('IGST') exemption to imports under Export Promotion Capital Goods ('EPCG') Scheme can be applied retrospectively

M/s Sanathan Textile Private Limited vs. Union of India & Ors [TS-602-HC(BOM)-2022-GST]

FACTS OF THE CASE

- Upon introduction of GST, Section 3 of the CTA, 1975 was amended to provide for levy of IGST and Compensation Cess. However, corresponding amendment to Notification No 16/ 2015-Customs dated 01.04.2015, did not cover imports under EPCG Scheme for exemption from such levy. Thereafter, exemption was granted w.e.f. 14.10.2017.
- Thus, during the period, 01.07.2017 to 13.10.2017, the Petitioner paid IGST on import of capital goods under EPCG Scheme. As per the Petitioner, the amendment should have retrospective effect and thus, approached the HC for reassessment of Bills of Entry and for grant refund of IGST paid by them.

JUDGMENT

- The HC held that amendment to Notification No.16/2015, inadvertently did not provide for exemption to imports under EPCG Scheme. The HC further held that it was always the intention of the Central Government to grant exemption to imports under EPCG Scheme from payment of additional duty under Section 3 of CTA.
- Thus, Notification dated 13.10.2017 has to be read as clarificatory in nature as the Foreign Trade Policy 2015-2020 provided for imports under the EPCG Scheme at zero custom duty. Thus, the Petitioner is entitled for refund.

Whether GST authorities can assess the admissibility of credit availed in the pre-GST regime

Usha Martin Limited Vs Additional Commissioner, Central GST & Excise [2022-TIOL-1478-HC-Jharkhand-GST]

FACTS OF THE CASE

- The Petitioner held registration under the erstwhile Central Excise Act, 1944 ('Excise Act') and the Finance Act. CENVAT credit pertaining to such registrations were transitioned to GST through Form GST TRAN-1. The Respondent disallowed such transitioned credit, as the same were ineligible under the erstwhile legislations.

JUDGEMENT

- As per Section 73 of the Central Goods & Service Tax Act, 2017, ('CGST Act'), proceedings can be initiated only for non-payment or short payment or erroneous refund or wrong availment of credit which are inadmissible under the CGST Act. Thus, there is no power to issue notice pertaining to credits availed under pre-GST regime.
- Thus, initiation of proceedings u/s 73(1) of CGST Act for contravention of provisions of Excise Act and Finance Act was held to be beyond jurisdiction. Consequently, the High Court quashed the Order passed by the Respondent.

RECENT ADVANCE RULINGS

Whether Credit of GST paid on Corporate Social Responsibility ('CSR') expenses is available

M/s Bambino Pasta Food Industries Private Limited [TS-581-AAR(TEL)-2022-GST]

FACTS OF THE CASE

- As a part of CSR, the Applicant purchased & donated oxygen plants & spare parts to AIIMS Hospital. The question raised for determination is as to whether the Applicant should be eligible to avail ITC on such expenses.

RULING

- The Authority for Advance Ruling ('AAR') observed that expenditure incurred towards CSR under Section 135 of the Companies Act, 1956 is mandatory/ obligatory in nature and failure invites penalty. Thus, such expenditure is made in the course or furtherance of business and accordingly, ITC of the GST paid thereon should be allowed.

Whether GST is applicable on cost of diesel incurred for a Diesel Generator ('DG') set in the course of providing DG Rental Service?

M/s Tara Genset Engineers [2022 (11) TMI 897]

FACTS OF THE CASE

- The Applicant provides DG sets on hire. Further, they also recover diesel cost incurred for running of DG set and discharge GST @ 18% on same. The question raised for determination is whether GST will be applicable on recovery of diesel cost as diesel is outside the purview of GST.

RULING

- AAR observed that Section 15 of CGST Act provides that the value of supply shall include any amount that the supplier is liable to pay but which has been incurred by the recipient of supply and is not included in the consideration.
- The AAR held that without fuel, DG set cannot be operated to generate electricity. Further, the Applicant enters into a comprehensive contract that comprises of fixed (hire) & variable (diesel) consideration. Thus, reimbursement of diesel cost incurred for running DG set is an additional consideration for renting of DG set and attracts GST @18%.

Whether a person supplying exempted goods is liable to pay GST under Reverse Charge

M/s Innovative Nutrichem Private Limited [2022-TIOL-130-AAR-GST]

FACTS OF THE CASE

- The Applicant is a manufacturer and supplier of animal feeds which are exempted from GST.
- The question for determination was whether the Applicant being a supplier of exempted goods is liable to pay GST under Reverse Charge Mechanism ('RCM') on Goods Transport Agency services and Security services.

RULING

- AAR held levy of GST on a particular supply does not have a bearing on the taxability of other supplies received or provided by the Applicant. Thus, it was concluded that the exemption provided to the outward supplies of the Applicant does not have a bearing on the GST liability under RCM on the supplies received by the Applicant.

We hope you have enjoyed reading this update. For further information please write to us at insights@elp-in.com or connect with our authors:

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